IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

WRIT PETITION NO. 4052 OF 1997.

Shri Om Jagdish Bahel ... Petitioner.
V/s.
The State of Maharashtra & ors. ... Respondents.

Shri M.L. Chaturvedi for the petitioner.

Shri A.H. Palekar, AGP for respondent No.1.

Smt. S.A. Mudbidri for respondent No.2

CORAM : V.C.DAGA, J.

DATED : 29.8.2006.

JUDGMENT:

. Heard rival parties.

Perused petition.

2. This petition is directed against the order of the Maharashtra Revenue Tribunal (MRT), Pune, dated 18.10.1996 rejecting review application bearing No. Ten.C-17 of 1996, without dealing with the contentions on merits, merely holding that since High Court was pleased to dismiss Writ Petition No. 174 of 1997 under Articles 226 & 227 of the Constitution of India, review petition was not tenable. The relevant portion of the impugned order of the MRT reads as under:

> . "This is a review application under sec. 322 of the Maharashtra Land Revenue Code, 1966, hereinafter referred to as the Code, against the Maharashtra Revenue Tribunal's order dated 27.4.1995 in Tenancy Application No. 174, confirming the

concurrent findings given by the Assistant Collector, Panvel and the Tahasildar, Khalapur.

2. My order was challenged before the Hon'ble High Court in Writ Petition No. 174/1966 under Articles 226 & 227 of the Constitution of India. After hearing the petitioner and respondents the Hon'ble High Court has passed an order as under:

. " In the present matter I am not inclined to interfere in the matter. Hence W.P. is rejected.

. However, Ld. Advocate for the petitioner wants to move the M.R.T. in review.

. It is not for this Court to grant liberty to move for review. If the petitioner is so advised the petitioner may move M.R.T. Office is directed to return record and proceeding to M.R.T. forthwith.

3. Advocate Shri G.B. Karandikar for the applicant argued the review application on merits. However, the learned Advocate Shri C.G. Parulekar for Opponent No.2 objected for hearing the review application on merits since he submitted that the Hon'ble High Court has rejected the writ petition challenging my order. Even the Hon'ble High Court has not granted liberty to move for review, hence advocate Shri Parulekar submitted that my order is totally confirmed and so the review application is not maintainable.

4. It is a fact that the applicant challenged my order in writ petition. However, as stated above, the Hon'ble High Court has rejected the writ petition and confirmed my order. In view of the High Court's order in writ petition, the review application is not at all maintainable and hence, there is no need to hear the review application on merits. I, therefore, pass the following order:

ORDER

. The review application stands rejected. No order as to costs"

Submissions:

3. Learned Counsel appearing for the petitioner submitted that the impugned order is contrary to the law laid down by the Apex Court in the case of **The Workmen of Cochin Port Trust vs. The Board of Trustees of the Cochin Port Trust and anr. AIR 1978 SC 1283**. The view taken by the Tribunal is unsustainable in law. The same suffers from an error apparent on the face of the record.

4. Learned Counsel appearing for the respondents tried to support the impugned order contending that dismissal of the writ petition by this Court will operate as res-judicata and, therefore, review petition was not maintainable.

Consideration:

5. Having heard rival parties, it is difficult to sustain the order passed by the MRT impugned in this petition. This Court was pleased to dismiss the writ petition by non-speaking order. This Court did not record any reasons for dismissal of the writ petition. Therefore, it was open for the petitioner to file review petition, which ought to have been dealt with on merits.

6. The Apex Court in the case of The Workmen of Cochin Port Trust (cited supra) was pleased to lay down law as under:

> "A writ proceeding is a different proceeding. Whatever can be held or even constructively while dismissing the special leave petition cannot be re-opened. But the technical rule of res-judicata, although a wholesome rule based upon public policy, cannot be stretched too far to bar the trial of identical issues in a separate proceeding merely on an uncertain assumption that the issues must have been decided. It is not safe to extend the principle of res-judicata to such an extent so as to found it on mere guess-work. To illustrate our view point, we may take an example. Suppose a writ petition is filed in a High Court for grant of a writ of ceretiorari to challenge some order or decision on several grounds. If the writ petition is dismissed after contest by a speaking order obviously it will operate as res-judicata in any other proceeding, such as, of suit, Art. 32 or Art. 136 directed from the same order or decision. If the writ petition is dismissed by a speaking order either at the threshold or after contest, say, only on the ground of laches or the availability of an alternate remedy, then another remedy open in law either by way of suit or any other proceeding obviously will not be barred on the principle of res-judicta. Of course, a second writ petition on the same cause of action either filed in the same High Court or in another will not be maintainable because the dismissal of one petition will operate as a bar in the entertainment of another writ petition. Similarly, even if one writ petition is dismissed in limine by a non-speaking order one word order 'dismissed', another writ petition would not be maintainable because even the one word order, as we have indicated above, must necessarily be taken to have decided impliedly that the case is not a fit one for exercise of the writ jurisdiction of the

> High Court. Another writ petition from the same decision will lie. But the position is substantially different when a writ petition is dismissed either at the threshold or after contest without expressing any opinion on the merits of the matter, then no merit can be deemed to have been necessarily and impliedly decided and other remedy of suit or other proceeding will not be barred on the principle of res judicata."
>
> (Emphasis supplied)

7. In the present case, writ petition was dismissed by non-speaking order. In otherwords, writ Court refused to exercise extra ordinary writ jurisdiction at the threshhold without assigning any reason and therefore, neither principle of res judicata nor doctrine of merger would come into play.

8. In the above view of the matter, review petition was perfectly maintainable subject to Law of Limitation. Consequently, it was obligatory on the part of the Tribunal to hear the review application on merits. Since review petition was not heard on merits, the impugned order is liable to be set aside and proceedings are liable to be remitted back to the Tribunal for consideration afresh.

9. In the result, the impugned order is quashed and set aside and proceedings are remitted back to

the Tribunal. Review application is restored to the file of MRT with a direction to hear the same on its own merits by a reasoned order. All rival contentions are kept open. No order as to costs.

(V.C.DAGA,J.)